

House Bill 721
February 22, 2007
Presented by M. Jeff Hagener
House Fish, Wildlife and Parks Committee

EXHIBIT 6
DATE 2.22.07
HB 721

Mr. Chairman and committee members, I am Jeff Hagener, Director for Montana Department of Fish, Wildlife & Parks (FWP).

FWP agrees with the intent of HB 721 to amend the stream access statutes to codify the Galt v. State, 225 Mont. 142, 731 P.2d 912 (1987), decision. This decision in Galt I found a few provisions of the stream access statute unconstitutional but at the same time qualified the holding. These important qualifications are not reflected in HB 721.

Camping is an example. The court held that "[o]vernight camping is not always necessary for utilization of the water resource itself." (emphasis added). It is important to recognize that the stream access statutes prohibited in 87-1-302(2)(e): "overnight camping within sight of any occupied dwelling or within 500 yards of any occupied dwelling, whichever is longer". In other words, camping was allowed outside the sight and distance restriction. HB 721 simply amends subsection (2)(e) with the result that overnight camping will be allowed if it is necessary for the use of a river but there will no longer be a sight or distance restriction. The sight or distance restriction was not declared unconstitutional and should remain as a policy decision of the Legislature.

Putting all of this together for camping, subsection (2)(e) should be amended to prohibit "overnight camping, unless necessary for the enjoyment of the water and it is done out of sight of, or more than 500 yards from, any occupied dwelling".

The Galt I court said that allowing the public to erect permanent duck blinds, boat moorage or any other permanent object was unconstitutional but recognized that temporary duck blinds could be allowed. Therefore, seasonal duck blinds, moorage and other objects that are necessary for the recreational use of a particular river are still part of the public right to use public water. This should be codified in language similar to what FWP is suggesting for overnight camping.

Also, on page 3, lines 24-25, the sentence that says "Any use of real estate that is adjoining the water is allowed with permission or contractual agreement with the landowner." If adjoining land means land above the high water mark, the sentence is unnecessary. If adjoining land means land down to the low water mark, that sentence is directly in violation of the underlying Curran and Heldreth decisions. This sentence should be amended out.

FWP's position is that the above described change to HB 721 are necessary to accurately and fairly codify the Galt I decision.